A COMMUNITY GUIDE TO PROTECTING INDIGENOUS KNOWLEDGE

Research & Analysis Directorate

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Canada

A Community Guide to Protecting Indigenous Knowledge

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1. INTRODUCTION

Empower your community

Aboriginal communities must nurture their Indigenous Knowledge in order to preserve it, pass it on to the next generation as they have done down through the centuries, and protect it from misuse by others. A community's Indigenous Knowledge (IK) can define a community's uniqueness, can underlie its relation to the world, and can tie the past to the future.

However, there are no easy, instant ways of preserving and protecting IK. On the one hand, it is disappearing from many communities, often due to changes in Aboriginal lifestyles that are hindering the process of transferring knowledge from the elders to younger members of the community. On the other hand, it is being misused and often abused by those outside the community.

Preserving, protecting and nurturing this knowledge is challenged by many factors:

- Some communities do not know what traditional knowledge they possess.
- Many communities do not know how to go about identifying and protecting it.
- There are few national and international laws that help Aboriginal communities preserve and protect their knowledge in a way that reflects their traditions and customs.

More and more Aboriginal peoples are demanding recognition for the right to control their own knowledge. Some communities are actively working to preserve their IK. They are collecting and recording oral traditions and knowledge and they are devising ways to make the knowledge more relevant to young people. Others are taking a legal route to prevent exploitation of their IK. However, finding long-term sustainable solutions to preserve and protect IK has not been easy. Too often, IK issues are examined from the perspective of researchers and policy makers. Glaringly absent is a community perspective that focuses on community control and management, even though it is the communities, no one else, that are responsible for guarding and transmitting this knowledge.

Aboriginal communities in Canada and elsewhere have the ability to do many of the tasks necessary to protect and control access to their IK. We believe a community-based model can provide a strong framework for these efforts. This guide is designed to help communities establish such a practical model. As you proceed through the guide, community-based solutions should emerge that can help your community realize its IK-related goals.

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This guide outlines key issues and practical steps that can be taken towards this objective. It begins by exploring what IK means and includes, and the reasons why Aboriginal peoples have begun to take active measures to preserve and protect it. The guide then suggests specific steps that can be taken, using a community development model, to begin the process of preserving and protecting IK. This guide covers such actions as

- Organizing a first community meeting
- Identifying key issues and concerns
- Progressing to an IK management approach
- Securing control over the uses of your community's IK

Although a step-by-step community development process will be outlined, we recognize that each community is different and that needs and actions will vary. The issues raised here will hopefully provoke discussion and stimulate action. It is also hoped that by adopting a community development model already familiar to many Aboriginal communities, the guide will be an effective tool to help you begin or further develop your community's approaches to these issues.

The main objective of this guide is to empower communities to recognize, protect, preserve and share their knowledge in keeping with their goals and traditions.

This guide outlines key issues and practical steps that can be taken towards this objective. It begins by exploring what IK means and includes, and the reasons why Aboriginal peoples have begun to take active measures to preserve and protect it. The guide then suggests specific steps that can be taken, using a community development model, to begin the process of preserving and protecting IK. This guide covers such actions as

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2. WHAT IS INDIGENOUS KNOWLEDGE? WHY DOES IT NEED PRESERVATION AND PROTECTION?

What is Indigenous Knowledge?

Asking this question is the first step forward on the road to protecting your IK. Simply stated, Aboriginal peoples define it as an ancient, communal, holistic and spiritual knowledge that encompasses every aspect of human existence.

Some say the emphasis should be on wisdom rather than on knowledge. Others say that IK must be understood within a spiritual realm, because knowledge cannot be separated from the spiritual. Most Aboriginal peoples agree that IK is unique to each tradition and is closely associated with a given territory. Thousands of knowledge systems probably exist, which are as many and varied as there are Indigenous peoples and territories.

IK includes such major areas as:

- Agriculture and horticulture
- Astronomy
- Forestry
- Human health, traditional medicines and healing
- Knowledge of animals, fish and ecological systems
- Sustainable use of natural resources and the environment
- Traditional classification systems for living and other resources
- Learning systems and oral traditions
- Spirituality
- Symbols
- Traditional arts and culture

Artwork, designs, symbols, scientific and ecological methods, crafts, music, dance, songs, stories, foods, medicines and wellness (or disease-prevention) products – all draw on IK.

In Canada today, IK is being applied in such complex areas as scientific, genetic and medical research, resource management and monitoring development impacts. In some areas, it is playing an important role in managing forests, coastlines, waters and Arctic ecosystems. In Nunavut, for example, the Nunavut Impact Review Board considers IK to be equal to scientific knowledge. Thus, traditional ecological knowledge will be relied upon in Nunavut when making decisions about development, ecosystems and traditional culture.

Some examples of Indigenous Knowledge at work

To guide research under the Northern Contaminants Program, Traditional Knowledge Research Guidelines were developed by the Council for Yukon First Nations (CYFN), First Nations, government and boards. The use of traditional knowledge along with western science is important for monitoring the health of people and the ecosystem. Aboriginal peoples in the North rely heavily on country foods for their dietary needs. A dietary study included nutrition, risks of not eating traditional foods, contaminants, risks of exposure and benefits of traditional foods. The guidelines will enhance the relationship between western scientists and First Nations to ensure proper protocols are followed when scientists research Aboriginal peoples.

Source: *Summary of Northern Contaminants Program: Projects for 1999-2000.* Indian and Northern Affairs Canada, 2000.

Indigenous Knowledge and western science

IK differs from western scientific thought in several ways. Table 1, below, provides some examples of the differences.

Table 1: Differences Between Science and Indigenous Knowledge

Factor	*SCIENCE*	Indigenous Knowledge
How approached	Compartmental	Holistic
How communicated	Written	Oral
How taught	Lectures, theories	Observations, experience
How explained	Theory, "value free"	Spiritual, social values

Understanding these differences is important to understanding the uniqueness, role and value of IK to Aboriginal peoples.

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WORKSHEET 1

INDIGENOUS KNOWLEDGE

List specific examples of your community's IK; for example, specific medicinal or artistic products.

List examples of how your IK has been used in your community; for example, in agriculture, physical or spiritual healing, or in services provided to others such as recreation.

Why do communities want to preserve their Indigenous Knowledge?

While most communities want to preserve and develop their IK, and continue to share it among community members, many have seen their knowledge begin to disappear. Lifestyle changes, in particular, have hampered transmitting knowledge from the elders to the younger generation.

Preserving a community's IK is different from protecting it from misuse by others. Communities may want to preserve their knowledge for a number of reasons. Some communities have identified a range of economic benefits to be gained from sharing their IK with others. They do not want to have these economic benefits stripped from them. For example, some aspects of IK can contribute to industries such as eco-tourism, culture, clothing, art, cosmetics, agriculture, etc. Specific products and services, which have existing or potential markets outside the community, may be related to a community's knowledge. The identification, preservation and use of a community's IK can, therefore, help the community achieve its own economic development goals.

Other reasons to preserve IK are artistic in nature. For example, some community members create artistic and literary works that draw on traditional knowledge. They do not want, as any artist, writer or musician would not, to have their works used without their permission. However, they may want to have access to as complete a store of community knowledge as possible to stimulate their creativity.

Preserving IK will also contribute to the cultural and political goals of self-identity, self-reliance (especially the ability to support traditional lifestyles) and self-government by creating a strong, ongoing appreciation within the community of its history and its roots. For many communities, these reasons will be the most important ones for preserving and protecting their knowledge.

By preserving and protecting their IK and ensuring their ownership of it, Aboriginal peoples can better enjoy and share the potentially wide range of benefits that stem from that knowledge.

Why does Indigenous Knowledge need protection?

Because IK has a wide range of commercial and scientific uses, it is becoming increasingly valued by people outside Aboriginal communities. In recent years, interest in this knowledge has greatly increased, often stimulated by the search for Aboriginal peoples' knowledge of medicines, sustainable use of the environment and their cultural practices and arts. This has led to situations where IK has been gathered and used without contacting the source of the knowledge; for example, the use of traditional medicines as a basis for

developing western pharmaceutical products and herbal remedies, or the unauthorized use of Aboriginal designs on T-shirts and other commercial goods.

Abuses of IK include:

- Unlicensed and unauthorized commercialization of IK
- Taking images, such as photographs, film and video of Aboriginal people, their way of life, etc.
- Using, reproducing or copying Aboriginal names, images and arts without permission
- Use and misuse of symbols without permission
- Disclosing secret knowledge and cultural property
- Publishing research without recognition or reward for the knowledge holders
- Entering into community research without fully explaining how the research will be used or who owns the results

Because of these types of abuses, protecting IK from unauthorized use by others is a growing concern for Aboriginal communities. Historically, Aboriginal peoples have willingly shared their knowledge, often joking that a typical Aboriginal family consisted of parents, children, kin and an anthropologist. However, interest in their knowledge by outsiders has often been based on relationships that have not always been fair, equitable or beneficial for the community.

This is changing today. If Aboriginal peoples decide to share their knowledge, they should be able to share it in a way that is consistent with their traditions and social values as well as in a way that reflects its economic value. Protecting against the abuses and misuses of the present and past is essential to establishing a balanced, consent-based system for sharing IK.

WORKSHEET 2

EXAMPLES OF MISUSE OR ABUSE OF INDIGENOUS KNOWLEDGE

Are there any cases in your community where its IK is being misused or abused?

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3. HOW CAN INDIGENOUS KNOWLEDGE BE PRESERVED AND PROTECTED: A COMMUNITY DEVELOPMENT MODEL

Because Canadian and international laws designed specifically to protect IK are almost non-existent, it is up to communities to take the necessary steps to preserve and protect their knowledge, at least until other legal developments take place.

The main focus of this guide is to help communities bring to life the critical concept that can underlie the preservation and protection of their knowledge. This concept is the right to give **prior informed consent** to sharing and using their knowledge and products. This right implies that protecting and sharing knowledge means developing equitable relationships. Whether communities are working with business, educational institutions or government, they have to develop the skills and capacities to manage their knowledge. One way to achieve this is by applying a community development approach.

Community development model a key factor

Community development is community action that is led by and for the people. A community development model that relies on traditional values and systems is a powerful tool. The community development model applied in this guide is well understood by Aboriginal peoples and reflects Aboriginal culture and values. It employs three basic steps:

- Organization
- Assessment
- Action

This model reflects the familiar concepts of community processes, consensus building and empowerment. It is a model used in education, health, economic development, community healing, etc.

Sustainable forests and the Wikwemikong First Nations

The Wikwemikong First Nations used a high level of community involvement to develop a long-term sustainable forestry management plan. The community's commitment to the process is essential to the program's success in creating jobs and sustainable development.

Source: *First Nations Effective Practices: Getting Things Done in Aboriginal Communities, Businesses and Organizations.* Indian and Northern Affairs, 1997.

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The goal of applying a community development model is to empower communities so that they can preserve, control, protect and share their IK through equitable and mutually beneficial relationships. To achieve this goal, communities need to work toward the following core principles:

- Ensure community participation
- Organize the community around traditions and culture
- Identify concrete community benefits and resources
- Build strong IK organizations

The community development framework is specially developed in this guide to work with the three core ideas that are reflected in the concept "prior informed consent". As seen in Table 2, below, the three core ideas reflect the three stages of community action needed to protect IK.

Table 2: Comparing Prior Informed Consent to Community Development

Prior - Informed - Consent	Community Development Model	Tasks
1. Prior	Organize	Community organizing and planning and processing initial information
2. Informed	Assessment	Gathering and assessing full information
3. Consent	Action	Making decisions and implementing action plans

By combining community development and prior informed consent, a community will develop the mechanisms necessary for it to give, or withhold, its prior informed consent for using its knowledge. This combination also reveals that many of the steps required to protect IK from misuse are also relevant to preserving it, and that many steps relevant to preserving the knowledge are also relevant to its further development and use by the community. This is especially so in the early stages of the process, when it is important for a community to assess its store of knowledge, determine its social, cultural and economic values in relation to that knowledge and establish its priorities in this area.

The approach developed in this guide also supports developing the economic value of its IK if the community so chooses. We believe that, where appropriate, using and sharing IK can play a role in planning and establishing a community's commercial or other socio-economic goals. The extent to which IK can contribute to these goals will vary from community to community.

This is a grass-roots, community-led approach to a problem that, to date, has largely focused on western conceptions of intellectual property rights to help ensure those rights. What will be shown below is that not only are these rights just one type of tool to use, but also that these tools have their limitations.

4. STAGE 1: COMMUNITY ORGANIZING AND PLANNING

Empowering local communities to protect and preserve their IK begins with community organizing and planning. From the beginning, there are several important organizational goals to keep in mind:

- Working closely with the community
- Maintaining communications
- Achieving results
- Providing concrete benefits and services

In this first stage, the community will need to:

- Understand what is meant by IK and its products
- Identify what organizational structures it needs to understand the scope of its knowledge and to gather it together
- Determine what roles community members can play

Walpole Island Heritage Centre

Traditional knowledge of medicinal plants found on Walpole Island, Ontario, and their associated health treatments are collected and documented by the Walpole Island Heritage Centre. The Centre's goals are to preserve and restore the Walpole Island First Nations natural and cultural heritage, to restore rights and to improve its capacity to manage traditional homelands. The Centre maintains a very strong community-based decision-making approach, and receives its direction from the Walpole Island First Nation and the community. The Centre works with outsiders and shares its knowledge with other First Nations through the media and publications. It also works with other First Nations as a consulting agency on matters of common concern and interest.

Source: Walpole Island Heritage Centre newsletter

To begin the process, organizers must bring people together. The first meeting is a major opportunity to set the process in motion and to inform, involve and mobilize the community. It can also be used to establish a community organization or committee specifically for the IK effort.

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Choose an appropriate format for conducting the first meeting
Organizers should first decide what type of meeting would work best in the community. Would a general meeting to which all members of the community are invited be the most effective? Or would an information open house be the best way to begin the process? Or a brainstorming session with selected participants?

Community organizers have a number of meeting format options:

- A participatory meeting is an open meeting that tries to get everyone involved in the discussion and decision-making
- An information meeting develops awareness of issues
- A workshop is more hands-on, and combines awareness with small group discussions
- Brainstorming sessions generate ideas and solutions from the community level
- An open house is less formal, and uses displays, one-on-one discussions, or less formal presentations to generate interest and awareness

There are many options, but the organizers have to decide where their community is at in terms of the issues and what is the best meeting format that will stimulate interest, commitment, support and action.

WORKSHEET 3

MEETING FORMAT

What factors should you consider when choosing a meeting format? Factors could include the level of community awareness and support, community solidarity on the issues, the desired level of community involvement, the size of the interested community, etc.

Who should you consult about the meeting format?

Based on past experience, what has been the best meeting format for your community?

Organizing the first meeting

Some say life is in the details. This certainly holds true for successful meetings. Before the first meeting, it is important to ensure the best possible attendance by sending out invitations and notices explaining the purpose of the meeting. Organizers should communicate directly with members of the community they think will be interested. As well, organizers should provide enough information so everyone knows why they should attend the meeting and what type of preliminary decisions they may be asked to make during the meeting.

The following general goals may help guide organizers of the first meeting communicate the meeting's purpose as well as structure the meeting:

- Present a preliminary picture of the problems and opportunities for the community relating to IK
- Raise awareness so that community members will want to work to preserve and protect IK
- Start recruiting workers for problem-solving efforts
- Offer a tentative problem-solving direction, not comprehensive plans
- Turn problems and issues into specific actions. For example, if community members have identified a problem where community designs have been appropriated, they may want to hold a more detailed information session to look at their rights and options in this area. The information session could lead to action on larger IK issues.

Salmon and the T'Sou-ke First Nation

The T'Sou-ke First Nation, Vancouver Island, British Columbia, using an extensive community-based process, successfully found a solution that will help revive salmon stocks. The T'Sou-ke conducted community workshops, brainstorming sessions and worked closely with elders, partners and government. They decided to revive a traditional salmon trapping practice that is selective. The trap limits the amount of fish harvested to those that can be used. Extra fish caught in the trap can be returned to the sea.

Source: *First Nations Effective Practices: Getting Things Done in Aboriginal Communities, Businesses and Organizations.* Indian and Northern Affairs Canada, 1997.

Your community's first meeting will be critical. It is important to take the time and organize it well. The checklist below provides a comprehensive guide to successfully organizing your first meeting.

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CHECKLIST

Pre-meeting organizational tasks useful for all meetings

- Communicate the purpose of the meeting clearly and well beforehand
- Arrange for a discussion leader, facilitator or chairperson to run the meeting
- Appoint someone to take notes and prepare meeting minutes that record what was said, who said it and the decisions made
- Prepare a draft agenda
- Ensure resource materials are available
- Choose appropriate speakers
- Choose a convenient, suitable location

First meeting

The primary goal of the first meeting is to determine whether there is a need and desire in the community to look further into IK issues. The first meeting will not solve problems, but it can provide a sense of the need to do so.

A draft agenda can help structure your first meeting and keep it running smoothly. It can set the stage so that participants can make meaningful decisions about whether or not to devote community time, resources and energy to this area. The sample agenda provided here is set out in the form of questions. Questions can be an effective way to start people thinking and talking about IK. You may not wish to use this format, but please consider the issues behind the questions in whatever format you use.

Sample draft agenda

1. Introduction

2. Questions for discussion
   - What areas of IK does our community possess?
   - Have there been abuses where our culture and knowledge has been appropriated and used without the community's consent?
   - Are we being approached to share our knowledge or culture?
   - What areas of our culture and knowledge might be priorities for protecting and managing, undertaking research and possible negotiation with outsiders? How do we establish this?
   - What other information do we need to set priorities and act effectively?
   - What organization is needed by our community to manage its IK, undertake research and negotiate with outsiders?
   - What roles should different members of the community play?

3. Actions to take
- Choose a lead organization
- Undertake further research
- Set a follow-up meeting

Begin the first meeting by describing any IK problems or concerns known to the community, especially those that might lead to an achievable solution. It is important for organizers to listen, provide information and suggestions, and accept criticism. It is important to help shape the direction for protecting and preserving IK, but not to control this direction in any pre-determined way. Ensure that all opinions are heard and recorded at the meeting and that a summary of the discussion is made available afterwards.

To help ensure that your first meeting goes smoothly, you may want to assign someone to be a "peacemaker". He or she would not be directly involved in running the meeting, but would assist the process around the issues. For example, a peacemaker:

- Can help diffuse problems by giving advice and suggestions to resolve conflict
- Can be responsible to ensure everyone is heard or has spoken
- Can ensure no one group or person dominates a meeting
- Can be appointed for every meeting to support community healing and focus energy on solutions and actions

The discussion at the first meeting will become the foundation for your next steps. The next step may include gathering further information and taking action. It will be important to communicate the nature of the discussion, actions required and results.

Perhaps the most effective tool to communicate your meeting message is a newsletter. A newsletter could be as simple as a letter or flyer and as sophisticated as a glossy publication. Many successful projects use newsletters to get their message out to the community.

If your community believes that further action is needed, even if only to make a final decision on whether to make a longer term effort, three steps can be taken before adjourning the first meeting:

- Identify an appropriate lead group, or a temporary lead group
- Set in motion the process to better identify your IK and what may be needed to preserve and protect it
- Set a date for the next meeting

Choosing a lead group

The first meeting will give the community an opportunity to choose a group or organization, or to form an organizing committee, to lead the IK initiative. When choosing a lead group, decide whether the organization has the capacity to foster community involvement, participation and development. Other factors to look for are the capacity to do research and develop relationships outside the community. If all these capacities are not available in the community, community members should consider partnering with outside institutions, such as academia, government, other Aboriginal peoples, etc.

The lead group can be chosen from a group or organization that already exists in the community, such as:

- Cultural centre
- Research centre
- Museum
- Land claims committee
- Education council
- Arts organization
- Trappers' organization
- Indigenous Knowledge committee

Or, the community may choose to start a new organization that is given a special mandate to address IK issues.

If your community believes that it is too early to choose a permanent lead group, or is not sure a long-term effort is needed, an existing body can be given a temporary mandate to work towards the next meeting.

WORKSHEET 4

CHOOSING A LEAD ORGANIZATION

What appropriate organization or group could lead the Indigenous Knowledge effort in your community, and why?

Starting the process to identify your community's Indigenous Knowledge issues

If the consensus of the first meeting is to take action, an important next step is to assign responsibilities for collecting preliminary information on the community's IK. Each community's analysis will, by virtue of its environment, history and culture, be different.

The full analysis of your community's IK may not be complete or comprehensive enough before a second meeting is held. But a preliminary analysis can still help move the effort forward. The preliminary analysis should clearly identify the type and range of IK held by the community, even if it does not identify all the knowledge itself. It may also begin to identify what areas of IK may have specific social, cultural and economic value, and whether any community IK has been misused.

The preliminary analysis may also begin to define the community's IK goals. What values are associated with it? Does the community wish to share it? Are there social, medical, economic or other reasons for doing so? If economic benefits might result from preserving its knowledge, this may, in turn, provide a greater incentive for the community to take the necessary next steps. A fuller discussion of these goals may come up either at the first follow-up meeting or at a later meeting.

Communities may wish to consider different ways to collect this information. The preliminary analysis should be conducted in ways that work best in your community; for example:

- Brainstorming sessions attended by interested community members
- An information survey conducted house-to-house, by phone, or at an organized event
- Workshops or further information sessions
- Interviews with elders

The goal, no matter what format is used, is to obtain facts and opinions. This first collection, once compiled, will provide some of the information needed to make informed decisions and to set the direction for further information gathering, organizing and planning and early actions.

CHECKLIST

Options for activities that will help identify community-based Indigenous Knowledge

- Brainstorming sessions - use a flip chart or index cards to collect ideas
- Information survey – use a questionnaire, checklist of ideas, open-ended questions
- Workshops – small group discussions and report back results
- Information sessions – prepare very good minutes of meeting, highlight suggestions
- Other alternatives – collect information via the Internet, telephone surveys, one-on-one interviews

WORKSHEET 5

METHODS TO START GATHERING INDIGENOUS KNOWLEDGE

What methods are best used in your community to begin to gather its IK in a way that will sustain the interest and enthusiasm of the first meeting?

Organizing a follow-up meeting

A follow-up meeting will allow the preliminary analysis of your community's IK to be presented. It will also give the organizers or committee an opportunity to answer questions raised at the first meeting that could not be fully answered at that time. A follow-up meeting can also be used to help confirm views on IK issues, and, in particular, whether IK issues are something the community wants to pursue in an organized manner.

A follow-up meeting may therefore lead to more informed decisions on which organization is best placed to manage a longer term effort, and on an initial set of goals and priorities for preserving and protecting your community's IK.

Draft agenda for a second meeting

- Introduction

- Presentation of results of preliminary assessment
  - What areas of IK does our community possess?
  - Have there been abuses where our culture and has knowledge been appropriated and used without the community's consent?

- What are our community's IK issues?
  - Are we being approached to share our knowledge or culture?
  - What areas of our culture and knowledge might be priorities for protecting and managing IK, undertaking research and possible negotiation with outsiders? How do we establish this?
  - What other information do we need to set priorities and act effectively?
  - What organization is needed by our community to manage its IK, undertake research and negotiate with outsiders?
  - What roles should different members of the community play?

- What is the community support for addressing IK issues?

- Developing an interim direction
  - Identify the community's preliminary goal and priorities
  - Start shaping some objectives statements for the community
  - Decide how to develop an action plan
  - Decide how the action plan will be supported and funded
  - What does the future look like in five years?

- Specific next steps

To organize the follow-up meeting, go through the same organizational steps as you did for the first meeting. Follow the same checklist for pre-meeting tasks listed on page 15.

Once a community decides to become active, it has completed the first steps of the community development model. It is then ready to advance to Stage 2: developing an informed community.

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5. STAGE 2: GATHERING AND ASSESSING INFORMATION

Once a community has identified in a general way its IK goals and priorities, it can assess the most appropriate community approaches for addressing them. No two communities are the same; therefore, no two sets of priorities will be the same and no two approaches will be exactly the same. Communities rich in arts will look for processes best suited for those areas. Communities rich in medicinal knowledge will look for tools suitable to preserve and protect that type of knowledge.

When a preliminary analysis of a community's IK has been done and a general outline of its priorities and goals has emerged, the community is ready to move to Stage 2. This involves becoming better informed, and taking the steps needed to prepare your community to take firm action. This is the **"informed" stage** of the concept of prior informed consent.

This stage will focus on answering major questions about using, sharing, preserving and protecting the community's IK. Committee members should keep in mind at all times that it is important to clearly communicate the benefits the effort will provide to the community. An obvious benefit is that the community can finally feel secure that it is developing a system to protect its knowledge and culture. Knowing that the whole community can benefit will create the supportive environment needed to carry out your work.

During the process, communities should consider their own strengths and weaknesses, and how these might affect the development of responses to their IK issues.

Protection of petroglyphs

For years Aboriginal peoples have had a problem with the unauthorized reproduction of sacred images, such as ancient petroglyphs (carvings in rock) and rock paintings. Images over 50 years old are not projected by copyright and Aboriginal peoples have had no success in stopping commercial exploitation. The Snuneymuxw may have found a solution. More than two years ago they registered 10 petroglyphs images with the Canadian Intellectual Properties Office and have asked artisans and merchants to stop using the images. Anyone using the images without permission could be taken to court. While there are dozens of images, only the more popular images have been trademarked and are now protected by the community from further abuse. The Snuneymuxw have repatriated this part of their heritage.

Source: *Nanaimo. Daily News,* Tuesday, February 15, 2000.

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Source: *Nanaimo. Daily News,* Tuesday, February 15, 2000.

A word of caution: developing an informed community may take several steps and many meetings. Trying to do everything at once may be overwhelming for both experts and non-experts. Preserving and protecting your IK is a long-term effort, which may take some time to get right.

Research is the key

To preserve and protect IK, a community needs as much information as it can gather. The goals and objectives that the community can support will be based on this research. As well, the research can also lead to developing an action plan that the community can nourish in the long term and that it can use to take its decisions to the next level.

As the research expands, both within and outside the community, the IK committee will need to assess the community's available resources against its priorities in order to meet these wider research objectives in an orderly way. For example, if the community has identified dealing with outside researchers as a priority over internal mechanisms to transmit its IK to its youth, the first area of research may have to focus on how to build relationships with outside researchers. The research may differ if an outside group desires to undertake medical research of value to the community members, as opposed to if it wants to use traditional medicinal knowledge to sell health products for private profit.

In choosing its research directions, a community will also need to assess its own available resources. This includes its people and physical resources – for example, museums, schools, archives, etc. – and its financial resources. Worksheet 6 presents some questions the organization charged with addressing IK issues might want to think about in some detail when it considers its research program.

WORKSHEET 6

RESEARCH RESOURCES

What resources are available to help collect more detailed information by and within the community?

What are the research possibilities: research in archives or other repositories, interviewing community members, etc.?

What are the challenges to collecting such information in your community?

Who will compile the information, where will it be stored and in what format (paper records, tape, video, disks, photographs)? Each format has special storage requirements that protect against deterioration over the years.

How can the information be made available to the community for local use?

Can research conducted by outsiders, but within the community, be housed in the community's resource centre?

Can the research be digitized for use and access on the Internet?

Do the research resources match the preliminary view of the community's priorities?

The table below sets out a series of different research ideas relating to three main areas, as well as some of the resources that will be needed to undertake the research. These areas are:

- Identifying community IK in detail and its values for the community
- Identifying ways to preserve IK for future generations
- Identifying ways to protect IK from abuse or misuse by others

Table 2: Research Objectives and Resources

Area	Research ideas	Resources needed
Identifying IK and its values	-full inventory of IK based on previously identified areas or categories -identifying social, spiritual and economic values of each area of IK -identifying economic opportunities of IK -ensuring confidentiality of the IK data (see subsequent boxes below)	-internal sources of local knowledge -historical records and artifacts -elders to contextualize knowledge -expert advice on appropriate research and interview techniques -economic market analysis of value of IK or IK products
Identifying IK to be shared and under what conditions	-identify IK that can be shared and IK that cannot be shared -identify IK that can be shared within community, but not with outsiders -identify IK that can only be shared by specific persons and develop protocols for access to this knowledge -identify IK that can be shared with everyone	-develop IK-sharing policy and guidelines -develop guidelines for accessing IK -develop process for sharing confidential IK

Table 2: Research Objectives and Resources-concluded

Areas	Research ideas	Resources needed
How can IK be preserved for future generations	-identify ways to record and preserve the knowledge -identify ways to educate youth and others -identify and build on the experience of other communities -ensure IK is stored in more than one area	-archival research assistance -museum or library support -collaboration with other First Nations -digitize IK for Internet -make digital and hard copies of IK resource materials
How can the community protect its IK from abuse	-prepare internal and external research guidelines -identify applicable federal, provincial or band laws specific to community types of IK -identify other relevant legal mechanisms -identify legal resources that can assist in specific cases	-collaboration with other First Nations -legal research capacity inside or outside the community -develop research protocols and guidelines -collaborations with other research institutions, such as public archives, libraries, etc.

Financial resources will, of course, be needed. Whether funded through internal resources or external contributions, a community will have to assess its needs and relative priorities.

When looking at different options to preserve and protect your knowledge, it is important not to pick just one option, but to explore two or three options. For example, in protecting traditional symbols, a community may want to examine copyright law, trademarks and a public information campaign. A community's ability to choose the most appropriate tools to preserve and protect its IK, and to enter into constructive relationships with others if it chooses to, will depend on whether the research has been responsive to the community's areas of IK and its goals and priorities. Choosing different approaches for conducting the research will improve the chances of success down the road.

Some key tools explored

Community-based research

Community-based research is led within the community for the purposes identified by the community. Because of this, this research approach has the best chance of developing a complete inventory of your community IK, and of understanding its value to the community. This approach will be less useful, for example, when it comes to assessing available legal tools to protect IK, when more specialized knowledge may be needed.

To expand the information already collected in Stage 1, a community-based research program may find the following questions helpful in formulating a questionnaire or interview process:

- What is the full scope of the community's IK?
- What are the detailed uses and social, cultural and economic (or other values) of your knowledge?
- Is the community's knowledge being adequately preserved and passed on now? How is it being passed on?
- What mechanisms are being used or are available in the community to better preserve the knowledge?
- What mechanisms are being used or are available in the community to train future generations in traditional knowledge?
- Has the community identified priorities for action to preserve its IK?
- Are there any particular strengths or weaknesses in the community that can be identified for special attention?

Community researchers will need guidance on how to collect the information needed to answer these questions and others they may develop. Special support, from inside the community, from other First Nations with similar experience or from other sources, may be needed for this purpose.

Community research committees

If the community's priority is to research its IK (whether it wants to preserve or protect its IK), the community should establish a committee and guidelines to manage and control the research. There are several types of possible research committees. Each has a different objective:

- To oversee research in the community conducted by outsiders with the community
- To oversee community-based research
- To negotiate research projects with government, academia and the private sector
- To manage the research agenda for the community

The community research committee can be organized from interested community members. Its functions and objectives should be developed by the community, which gives the IK committee the mandate to work on its behalf. (If the community does not specify a mandate, the committee will have to determine its functions and objectives.) Once the functions and objectives have been determined, the committee can identify the skills and knowledge required for it to function effectively. For example, if the committee will have to negotiate contracts, it will require a lawyer with experience in this area of law to participate either as part of the committee or as a resource to be drawn on. If the committee is to manage a health research project, people with expertise in this area of research will be required, etc.

Community research guidelines

Community research guidelines are written documents that are developed by the community to guide researchers inside and outside the community on what is expected of them. Guidelines also provide direction for research committees and organizations responsible for conducting a community's IK affairs.

Guidelines, which can be the basis for signed agreements, set out the community's expectations in clear, simple language and reflect its ethical practices. Guidelines help a community maintain control over research activities. Several communities have already developed ethical and research guidelines for outsiders conducting research in a community. "The Inuit Research Guidelines", found in Annex 4, is an example of this approach.

Creating guidelines should not be rushed. Guidelines should be the result of careful work and research. Many Aboriginal groups across Canada have developed research guidelines that could be reviewed as part of your own research. Research guidelines should be devised so that they can be applied to almost all types of IK research. The process to establish guidelines should be community-based and should lead to forming the basic principles that will govern all subsequent research in the community. Guidelines will also help the community understand the benefits the researchers anticipate as well as those that could be achieved by the community.

There are a number of issues to consider when creating research guidelines:

- How will the knowledge be collected or products be distributed by other parties?
- What uses will be made of the knowledge or products?
- Will these uses be for profit or non-profit purposes?
- What benefits are anticipated for others?
- What benefits are anticipated for the community?
- What useful traditional Aboriginal and western legal tools are available that the community can use to protect their knowledge being shared with others later on without consent?
- What traditional Aboriginal and western legal tools are available that will help a community benefit from the use of its knowledge?

The guidelines should spell out the community's rights and conditions and should be broad and flexible enough to be tailored to every research request. All parties should understand that the guidelines are the main written document that will define the relationship between the community and the researchers. It can be made part of a legal contract if the community wishes, whether under Aboriginal law systems or western systems.

CHECKLIST

Possible conditions to be included in research guidelines

- Researchers need to disclose: purpose of research, sponsors, project manager, benefits, community participation and any possible, foreseeable problems that might occur during the research
- Obtain prior informed consent from community and individuals
- Anonymity and confidentiality, except where legally precluded
- Guaranteed ongoing communication on project
- If research becomes unacceptable, project will be terminated
- Traditional knowledge will be used in all stages of research including problem identification
- Provide meaningful training for Aboriginal researchers
- Research must avoid social disruption
- Research must respect community protocols, privacy, dignity, cultures, traditions and rights
- Information should be available in appropriate languages
- The peer review process must be communicated to the community and its input sought in the process
- The community should have access to research data to the extent possible
- Identify partners in any cooperative research venture
- Establish mandate of community research committee
- Committee approves research, workplans and budgets
- Establish an elders and community knowledge keepers council
- Select community and outside researchers
- Establish technical advisory committee
- Select research participants
- Select research methodology, observation, interviews, questionnaires
- Establish rules and procedures for collecting, recording and documenting IK

Researching legal tools: Forearmed is forewarned

To address issues on how to share IK or its products, on what terms, on how to apportion benefits, and on how to defend the rights of the community and its members, a community may wish to consider the pros and cons of different legal mechanisms that might be available. This assessment is especially critical for longer term planning of relationships of any type with people outside the community.

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Annex 2, "General Legal and Other Mechanisms to Protect IK" and Annex 3, "The Use of Intellectual Property Rights: Strengths and Weaknesses", list a number of tools as well as their strengths and weaknesses. The community organization responsible for IK issues should study these annexes to see what available tools and mechanisms can help:

- Prevent unauthorized research
- Control the research
- Control the use of IK and its products
- Establish community benefits
- Protect products, works, crafts from being copied or adopted by others, etc.

It is also important to think about how legal rights can be enforced, and how to choose the legal tools that will make their enforcement easier in the event of a future problem.

However, these annexes are not enough. Once a community understands its own priorities, goals and resources, it will need a much more detailed process to identify the tools that are most likely to help it achieve its goals. This process may include consultations with community lawyers, other First Nations lawyers or other legal resources trusted by the community. The process will require community members to carefully understand how the available tools relate to their objectives.

It is also important to understand how different tools will work with each other. Intellectual property rights have often dominated the debate on tools to be used to protect IK. But as Annexes 2 and 3 show, they play a relatively small role in reality. Still, in many cases, more than one legal tool may be useful. Thus, intellectual property rights might be teamed with other tools to achieve a community's goals. When more than one tool is used, it will be very important to understand how they fit together.

Cowichan knitters – Combining a public awareness campaign and trademark registration

The livelihoods and intellectual property of the Cowichan knitters of Vancouver Island, British Columbia, were threatened by fakes on the market. The knitters successfully protected their products through an awareness campaign and by registering a trademark. The awareness campaign drew attention to the problem of fakes and it also gathered support for the knitters from the public and from arts institutions. The knitters also registered a trademark, which identifies an authentic Cowichan product, that can only be put on authentic Cowichan knitted products.

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WORKSHEET 7

IDENTIFYING RESOURCES TO HELP FIND THE RIGHT TOOLS

Who (individuals, organizations, others?) would be resources for further information on these tools or for help pursuing one of them?

We believe that an important part of developing a community's individual approach to relationships with researchers from outside the community will lie in a contract between the community and the other party. A contract creates an opportunity for relationships based on equality and equity. While a contract may not be appropriate for all circumstances, it may be an especially useful tool to consider and understand. One major advantage of a contract is that it can include any of the conditions a community believes is necessary to protect its IK from misuse or abuse.

Possible elements to include in Indigenous Knowledge contracts and agreements

- Recognition of ownership of IK
- Provisions on access and restrictions to secret and/or sacred knowledge
- Details on how the research will be undertaken
- Location of research, including sensitive sites
- Roles and responsibilities of the researchers and the community to review research, reports, progress reports, newsletters and other research documents
- Fee structure, honorarium and stipends for elders, community researchers and IK holders
- Expected benefits and research outcomes for the community and researcher
- How to deal with unanticipated results/outcomes
- Anticipated financial benefits for the community and the researcher, and allocation of any additional benefits
- Reporting and communications commitments
- Specific details on what the researcher will provide the community: reports, data, research notes, videos, tapes, photographs, collections (medicine plant samples), and other materials
- Researcher's and community rights to final product (reports, discoveries, intellectual property, IK), collections and discoveries.
- Researcher's and community rights to copyrights, licensing and patents

CHECKLIST

To complete Stage 2

To complete Stage 2, being fully informed, community IK organizers should have:

- Completed the inventory of the community's IK and its associated values and opportunities
- Clearly identified IK goals and priorities
- Established research guidelines for both internal and external researchers, if both are to be permitted
- Understood what tools are available to help preserve and protect its IK, and build constructive relationships with persons outside the community
- Conveyed the information to the community as a whole and received their support to move forward to the stage of taking decisions on a strategic plan of action

When these steps are completed, the community is ready to prepare its strategic plan – the first step in **Stage 3, Consent**. The plan will also become the community's mandate for further action.

6. STAGE 3: DEVELOPING AND IMPLEMENTING A COMMUNITY-BASED ACTION PLAN

Throughout Stages 1 and 2, the ultimate goal has been community empowerment to identify, preserve, manage, control and, in some cases, share IK. The end of the process, **Stage 3, Consent**, should solidify this empowerment, embody the community's long-term goals and reflect how it wants to achieve those goals.

Stage 3 should lead to a strategic action plan that brings together all previous research and decision-making. More realistically, it may lead to the creation of two action plans, one to preserve IK and one to protect it in the context of new outside relationships. The plan, or plans, should contain clearly stated objectives, tasks, resources and time frames, and must be implemented through the consent of the community.

Elements of an action plan: Preserving Indigenous Knowledge

The steps relevant to preserving IK have already been discussed. They include completing the IK inventory, identifying how to store it, adopting methods to pass it on to younger generations, and so on. The checklist below summarizes these different steps.

CHECKLIST

To preserve a community's Indigenous Knowledge

- Complete the inventory of IK as outlined in Stage 2
- Establish a process to catalogue IK
- Establish a process to transmit IK to future generations
- Identify steps to maintain secrecy and sacredness of IK where desired
- List funding sources and budget plans
- Assign specific tasks and responsibilities for these tasks
- Develop templates for contracts to govern future work with partners and outside researchers

Example of a table of contents for an action plan

- Executive summary
- Introduction
- Assessment of community IK
- Assessment of community IK needs
- Community IK priorities
- Community IK goals and objectives

- Pros and cons of various options
- Community partners
- Implementation of each objective: tasks, steps, resources and responsibilities
- Expected outcomes
- Budget
- Annex

Elements of an action plan: Protecting Indigenous Knowledge

An action plan for protecting IK builds on its preservation. Again, many of the steps have been discussed, such as identifying the values of a community's IK, any economic or other opportunities associated with it, understanding the different mechanisms available to protect it legally in relationships with outside people or agencies, and so on. In this section, we present additional ideas that arise from the checklist below.

CHECKLIST

To protect a community's Indigenous Knowledge

- Establish your community research guidelines
- Clarify what the customary law of the community is in this area, as noted in Annex 2
- Establish the community's economic goals and opportunities relating to its IK, if any, and a process for achieving them
- Establish community laws or regulations on access to community IK, again in Annex 2, and in keeping with such instruments as treaties, land claims and self-government agreements
- Establish a process for understanding the goals, methodologies, etc. of others seeking access to IK, including verifying the claims of a prospective researcher
- Establish a process to obtain community and individual consent in specific cases where access is sought:
  - Identify key legal mechanisms for interaction with others that are most consistent with community goals, and most likely to provide community benefits for that case
- Establish a negotiating committee
- Establish a monitoring committee to oversee outsiders' research
- Establish links with other communities who have similar objectives
- Establish a process for monitoring the success or failure of relationships with others in terms of achieving community interests

The general action plan for protecting IK must be consented to by the community as a whole. But implementing it in any given case is a matter of establishing a relationship with others outside the community. Where access is granted by a

community to a researcher, it should be based on a relationship of equality and respect. But even a decision to prevent research on your IK establishes a relationship, in this case one of non-interaction, which the community will wish to ensure is respected. Giving consent to share a community's IK or making a decision not to share it, therefore, raises a number of challenges that need to be considered in order to have a strong action plan.

In designing this aspect of an action plan, the following questions should be considered:

- Has the consent-giving process been designed so that it is specific to each request for access to IK or local resources relating to IK?
- How should the economic claims of a potential researcher be reviewed? What specialized resources may be needed? Who should pay for them?
- What process and support is available to determine which legal mechanisms should be used in any specific case to give consent and to protect community rights?
- Will the process identify other legal choices of tools to preserve and protect its IK?
- Does the process factor in how these choices can be enforced if there is a breach of a contract or an agreement that is used in the relationship?
- Does the process ensure that disputes can be resolved and avoided, and the success of a relationship can be monitored?

Answers to these questions should be incorporated into an action plan as the committee works out the steps, tasks, responsibilities and resources to achieve the community's goals. The research gained in Stages 1 and 2 should be compiled to provide the necessary background information on which a general action plan for protection can be based and on which specific decisions can be taken as they arise.

Resources and consent

We have already noted that the work in Stages 1 and 2 will need to reflect priorities and available resources. The same is true for action plans. When developing each plan, the community IK committee must also identify available community resources and set its priorities for implementing action plans with these resources in mind. Each element of the action plan or plans should be based on an available human or financial resource.

Because preserving and protecting a community's IK is a longer term plan, understanding the available resources should also be seen from a long-term perspective. Where a community's IK has significant economic values, this can help achieve the broader economic and social goals of that community and actually may help support an IK preservation plan. But this can only be established based on good research and the community's own priorities.

With these steps done, the committee can begin preparing a draft strategic action plan that will be circulated to community members. Suggestions for changes should be given full consideration. Reasons for rejecting suggestions should be provided so that all members of the community can understand the reasons why a plan takes the shape it does.

The draft strategic action plan can be circulated to every household in the community, with a request for comments, suggestions and feedback. The feedback can then be assessed to determine the next steps. One step may be to incorporate minor suggestions into the plan. Another step may be to identify any key "sticking points", if there are any, and how they should be dealt with. A further community meeting to discuss possible revisions and to seek consensus may also be needed. Once consensus is achieved, the appropriate administrative body to implement it can approve the plan.

Implementing the strategic action plan

Once a plan has been approved by the community, it needs to be implemented. Implementation will be an ongoing process in almost all cases. For example, transmitting information to future generations is, by its nature, ongoing. As well, implementation will also be an ongoing process in the following circumstances:

- Where a community has determined that some economic activities might be developed by the community itself to use the commercial aspects of its knowledge
- When a community wishes to respond, customized for each request, to others seeking access to its knowledge

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CHECKLIST

Implementing an action plan

- Have the community as a whole endorse and adopt the plan
- Assign specific tasks to specific people, groups or organizations
- Maintain an ongoing review, monitoring and assessment of the plan, including its successes, failures, difficulties, etc., through:
  - Quarterly progress reports
  - Staff reports on activities and planned activities
  - Assessment reports measuring outcomes to expectations
- Identify the benefits to the community to nourish support for ongoing efforts
- Keep outside funding sources informed of these same things
- Maintain a willingness to make adjustments to the plan to address difficulties encountered, changing circumstances and successes achieved

The Ojibway-Cree of Sandy Lake, Ontario: Negotiated benefits case study

The Ojibway-Cree of Sandy Lake, Ontario, have negotiated benefits with University of Western Ontario and University of Toronto scientists. It is suspected that the Ojibway-Cree have a super-economic metabolic gene(s), which was very useful when the Ojibway-Cree were living exclusively in their traditional manner. The gene enables the body to store every calorie eaten in order to survive during lean times. Scientists are studying their DNA. They believe they are among the first to identify a gene linking high rate of diabetes in Aboriginal peoples. In exchange for their collaboration in the research, the Ojibway-Cree have negotiated to receive fresh food, expanded medical services, special school programs and royalties from any profits that might follow a discovery. Some discoveries may not apply to the general population and, therefore, would have limited commercial potential.

Actions to complete Stage 3

To establish the foundation of a community's empowerment to deal with a wide range of IK issues, an action plan must be created. The action plan must, with community consensus, cover preserving and protecting the community's IK. The action plan can be considered to be complete when it is adopted by a community, along with its implementation plan.

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7. INTO THE FUTURE – MAINTAINING AN INFORMED COMMUNITY

An informed community can meet any challenge to its IK whether it is preventing encroachment, negotiating equitable sharing arrangements, or creating processes to communicate traditional knowledge to future generations. New aspects of a community's IK may be discovered in a forgotten archive, leading to new options to be explored for their social or economic values. Or a community may be asked to share its knowledge in a totally unforeseen way, such as in the Ojibway-Cree genetic research mentioned in Section 6. New opportunities can mean new benefits for the community. However, to take advantage of these new opportunities, a community must not only have flexible action plans, but must also be kept informed of new developments.

A community that remains informed is more likely to continue to support the allocation of resources to preserve and protect its knowledge. Because of this, ensuring that the community does stay informed and involved should be seen as an important component of the overall action plan.

Keeping your community up-to-date is an ongoing task, which means that some basic processes should be followed. The checklist below presents some suggestions on how to maintain interest in the IK effort, and in doing so, create an informed community.

CHECKLIST

Maintaining an interested, informed community

- Ensure one group does not dominate the process and decision-making
- Ensure all voices have a chance to be heard during meetings, brainstorming sessions, etc.
- Identify particular problems experienced by less vocal community members
- Ensure there is a wide range of community representation on the IK committee and at major meetings: women, men, elders, youth and specific groups (knowledge keepers, artists, hunters/fishers, etc.)
- Maintain the group's interest through workshops, guest speakers and training
- Keep the community informed about issues, developments, successes, benefits achieved, etc.
- Make sure meetings are productive: the agenda should be clear and lead to identifiable results or decisions
- Organize social and fund-raising events – for example, dinners, raffles, 50-50s, etc.
- Sustain participatory and consensus-building approaches to maintain support for community's IK goal and direction – always ensure community involvement in your meetings and that you have agreement on decisions
- Keep searching for and using best practices for developing and maintaining community involvement by sharing information with other similar organizations and establishing a network of Aboriginal organizations that can benefit from sharing experience and best practices

WORKSHEET 8

COMMUNICATING WITH THE COMMUNITY

What outlets (newspaper, newsletter, radio announcements, posters in community hall, etc.) does your community support that can be used to alert people about successes, changes, issues, research projects, new discoveries, etc. relating to its IK?

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A final thought

This guide can help Aboriginal peoples take control of their traditional knowledge. The obvious benefit is that traditional knowledge is protected and preserved for future generations to come. Knowledge is lost everyday when elders pass away; it is lost because someone has not documented their knowledge. This is a job not for one person or one family, but for a whole community. Through community development, Aboriginal peoples can preserve and protect their knowledge, and achieve its social, cultural and economic benefits for present and future generations.

Good luck!

Little Red River Cree Nation – Tallcree First Nation use of traditional knowledge in forestry

Little Red River Cree Nation – Tallcree First Nation, Alberta, is regaining control of their traditional lands through a Co-management Agreement (CMA). The plan calls for an ecosystem-based plan that uses traditional knowledge to manage the forest. Traditional knowledge is combined with scientific research to provide a holistic perspective on sustainable development.

Source: Little Red River Cree Nation

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Source: Little Red River Cree Nation

ANNEX 1: LEGAL TERMS GLOSSARY

A - INTELLECTUAL PROPERTY RIGHTS:

Intellectual Property Rights

Intellectual Property Rights (IPR) are rights that are defined by common and civil law or by statutes to regulate how and when a person can use the creative works and ideas produced by others. Intellectual Property Rights are strictly defined in law, and extend only to what is defined in the law. It is important to distinguish what rights are provided for and what rights you think should be provided for. The leading IPRs are:

Patents

Patents are rights given to prevent anyone from making the same product or process invented by someone else. They last 20 years. But the knowledge leading to the product or process must be disclosed, and others can use that knowledge to make other products or processes. The patent holder can sell or license his rights to the product or process.

Copyright

Copyright preserves the right of the original artist, writer, etc., to reproduce the work unless he or she agrees to have someone else reproduce it. This lasts for the life of creator of the work plus fifty years. It also helps protect against alteration or desecration of the work by anyone. These rights can be sold or licensed to others.

Neighbouring rights

Neighbouring rights require a performer of producer of a work to be paid for any public uses of the work, and apply to the performance itself, not just the written or visual reproduction of the work.

Trademarks

Trademarks are one or more words, or specific images or symbols, that distinguish one product from another in the marketplace. They can identify the producer of a product, the area or region it comes from, or the quality of a product. Once registered or clearly identified, trademarks cannot be used by anyone else as long as the original right holder continues to use the trademark.

Trade secret laws

Trade secret laws protect the efforts to keep commercially useful information secret. These efforts must be clear, for example in employment or other contracts, or in widely accepted practices.

Industrial designs

Industrial designs relate to the visual or aesthetic elements of an industrial product, associated with its functions.

B - TYPES OF CONTRACTS

Contract

A negotiated, consent-based agreement that binds both parties to the agreement to carry out its terms. Contracts can include a variety of elements, as seen in the checklist in the next Annex.

A contract may contain all or some of the following formats or elements:

Confidentiality or non-disclosure agreement

An agreement to keep information provided by the community to a researcher private and confidential. This has a parallel to protecting confidential business information in many legal systems. Such an agreement, or clauses in a larger agreement, are enforceable in court.

Licensing agreement

A licensing agreement provides specific rights to use certain knowledge or resources for either all purposes or for specific purposes, as agreed by the parties. There are different types of licensing agreements:

- *Exclusive licensing*, where the person receiving the license has the only right to use the knowledge or resources in the ways specified. Even the original holder of the knowledge or resources gives up his rights here.
- *Sole licensing*, where no other licenses can be given for the same purposes, but the original holder retains the rights to use it in the same way.
- *Non-exclusive license*, there are no limits on subsequent licenses or others using the same knowledge or resources.

Material transfer agreement

An agreement that specifies what physical things, such as plants, seeds, cultural goods or arts a person may receive, identifying the purposes permitted for its use, any specific conditions on its use, and benefits to be exchanged. Benefits may be scaled depending on commercial uses anticipated and those actually achieved. They can be exclusive to one person, or the same material can be provided to others as well.

Prior Informed Consent (PIC) agreements

For researchers to conduct research in the community, you can negotiate and sign a PIC agreement. These agreements can be used to clearly define the reasons, methods, potential impacts, expected outcomes and the intellectual property management of any scientific research activity that will involve Aboriginal peoples or their communities.

ANNEX 2: GENERAL LEGAL AND OTHER MECHANISMS TO PROTECT INDIGENOUS KNOWLEDGE

Goal	Mechanism	Strength	Weakness
Preventing research unauthorized by the community	Applicable provincial or federal laws on research	-Provides legal recourse against unauthorized research	-Only available in Yukon, NWT and Nunavut -May rely on others for enforcement
	Community (First Nation, Band) laws, rules	-Can be tailored to each community -Enforced by each community -Can use different approaches, e.g., trespassing, permit requirements, etc.	-Legal basis may vary among communities -Need to communicate rules to others -Only applicable in communities
	Information campaigns	-Develop community support, awareness, for community process	-Minimal, some resources required
	Public awareness campaigns	-Helps inform broader public -Can achieve goals without taking legal actions -May have a longer term consciousness impact	-Requires significant resources -Requires "good" issue

ANNEX 2: GENERAL LEGAL AND OTHER MECHANISMS TO PROTECT INDIGENOUS KNOWLEDGE

Goal	Mechanism	Strength	Weakness
Control research in the community by others	Permits under applicable provincial or federal laws	-Provides legal recourse for breaches	-Only available in Yukon, NWT and Nunavut -May rely on others for enforcement
	Development of community laws	-Can be developed in some cases under existing powers or new self-government agreements -Locally developed and tailored -Can reflect traditional laws and customs	-Legal basis may be challenged by others -Need enforcement or dispute resolution process -Only applicable in communities
	Prior informed consent agreement	-Consent based, negotiated contract -Reflects views of each side -Can be enforced in court if needed -Can also create own dispute resolution process -Can include elements of customary law	-May be hard to develop -Need to monitor implementation
	Research codes, guidelines	-Locally developed -Well understood by community	-Not legally binding per se -Need to communicate them to others
	Application of customary Aboriginal law	-Reflects community customs and values -"Levels" the playing field	-Often difficult to identify today -Not seen as generally binding law; therefore, would only be applicable by consent -Difficult to persuade others to use it, in part for the above reason

ANNEX 2: GENERAL LEGAL AND OTHER MECHANISMS TO PROTECT INDIGENOUS KNOWLEDGE

Goal	Mechanism	Strength	Weakness
Controlling use of Indigenous Knowledge	Research permits under applicable laws	-Provides legal recourse against unauthorized uses	-Only available in Yukon, NWT and Nunavut -May rely on others for enforcement -Need to include specific uses in permit
	Development of community laws	-Can be developed in some cases under existing powers or new self-government agreements -Locally developed and tailored -Can reflect traditional laws and customs	-Only applicable on community land -Legal basis may be challenged by others -Need enforcement or dispute resolution process
	Contracts (there are several types of contracts, see Annex 1)	-Based on mutual consent -Are legally binding -Can reflect community values -Can establish specific dispute resolution process and include elements of customary law	-May be difficult to negotiate in some cases -Requires monitoring
	Application of customary Aboriginal law	-Reflects community customs and values -"Levels" the playing field	-Often difficult to identify today -Not seen as generally binding law; therefore, would only be applicable by consent -Difficult to persuade others to use it, in part for the above reason -Only applicable on community land
	Public awareness campaigns	-Helps inform broader public -Can achieve goals without legal actions being taken -May have a longer term consciousness impact	-Requires significant resources -Requires "good" issue

ANNEX 2: GENERAL LEGAL AND OTHER MECHANISMS TO PROTECT INDIGENOUS KNOWLEDGE

Goal	Mechanism	Strength	Weakness
Controlling use of Indigenous Knowledge products	Research permits under applicable laws	- Provides legal recourse against unauthorized uses	-Only available in Yukon, NWT and Nunavut -May rely on others for enforcement -Need to have specific uses indicated in the permit
	Development of community laws	-Can be developed in some cases under existing powers or new self-government agreements -Locally developed and tailored -Can reflect traditional laws and customs	-Only applicable on community land -Legal basis may be challenged by others -Need enforcement or dispute resolution process
	Contracts (there are several types of contracts, see Annex 1)	-Based on mutual consent -Are legally binding -Can reflect community values -Can establish specific dispute resolution process and include elements of customary law	-May be difficult to negotiate in some cases -Requires monitoring
	Application of customary Aboriginal law	-Reflects community customs and values -"Levels" the playing field	-Often difficult to identify today -Not seen as generally binding law; therefore, would only be applicable by consent -Difficult to persuade others to use it, in part for the above reason
	Public awareness campaigns	-Helps inform broader public -Can achieve goals without legal actions being taken -May have a longer term consciousness impact	-Requires significant resources -Requires "good" issue

ANNEX 2: GENERAL LEGAL AND OTHER MECHANISMS TO PROTECT INDIGENOUS KNOWLEDGE

Goal	Mechanism	Strength	Weakness
Establishing benefits for the community	Basically all the above apply here as well		
Protecting plant or animal resources associated with knowledge	Federal, provincial environmental assessment and protection laws	-Provide legal requirements for protection, information gathering, especially in relation to Aboriginal interests -Some provide requirements for participation and use of IK -Can be supported by enforcement mechanisms -Laws of general application	-Can be expensive to use (but funding sometimes available) -Can be procedurally technically detailed and arcane
	Community laws	-Apply to resources within the community	-Only apply to actions within the community land
	Civil actions in court by community	-Can recover costs from damages -Can be used to prevent damages when imminent	-Often expensive -Must have proper legal support
Protecting community knowledge or works in the public domain from further use or imitation	Public awareness campaigns	-Helps inform broader public -Can achieve goals without legal actions being taken -May have a longer term consciousness impact	-Requires significant resources -Requires "good" issue
OTHER GOALS?			

ANNEX 3: THE USE OF INTELLECTUAL PROPERTY RIGHTS: STRENGTHS AND WEAKNESSES

Goal	Intellectual Property Mechanism	Strengths	Weaknesses
Protecting an image or symbol from being used without permission	Copyright under *Copyright Act*	-Covers 50 years after life of author/artist -Coverage is automatic and easy -Community mechanism as a whole can use this tool -Recognized by legal system for enforcement -Can use cooperatives for enforcement -Copyright goes to the original creator of the work, who can sell or pass it on to others -Can also apply to prevent alterations or desecration to a work	-Must be reduced to a specific work of art or written work -Not perpetual -Must undertake own enforcement action in most cases -Protects only that specific expression of the idea, but does not prevent others from modifying or building on it, or from using the knowledge the work contains
	Trademarks Act	-Communities can register and thereby reserve the use of symbols or images or names -Enforceable against any other user -Provide a good marketing tool	-Lasts for ten years, subject to being re-registered -Some symbols may be protected at common law, but this is rarer -Generally need to undertake own enforcement action
	Industrial Designs Act	-Specific designs can be registered -Enforceable under existing laws	-Limited time period -Design or image must be associated with the functional use of industrial product

ANNEX 3: THE USE OF INTELLECTUAL PROPERTY RIGHTS: STRENGTHS AND WEAKNESSES

Goal	Intellectual Property Mechanism	Strengths	Weaknesses
Protecting a written, artistic or oral work from being repeated, copied or performed by others	*Copyright Act*	As above	As above
	Neighbouring rights under the *Copyright Act*	-These rights go to the performer of a work that adds a distinctive element through the performance itself -Protects from imitation of copying of the performance -Also requires compensation for performers, producers -Last for 50 years from the performance	-Can be difficult to find violations and enforce
Protecting a craft from being copied or adopted by others	*Copyright Act*	As above	As above
	Trademarks Act	-Can trademark (reserve) identifying labels of origin or design -Can trademark a specific design pattern	As above
	Industrial Design Act	-Can preserve the use of a specific design for its ornamental value if associated with the use of the craft	As above

ANNEX 3: THE USE OF INTELLECTUAL PROPERTY RIGHTS: STRENGTHS AND WEAKNESSES

Goal	Intellectual Property Mechanism	Strengths	Weaknesses
Protecting a specific invention from being used by others	*Patent Act*	-Legally recognized and enforceable rights -Strongest right available -Protects that specific invention for 20 years	-Can be expensive to get patent and enforce it -Protection limited to 20 years -Requires disclosure of the knowledge behind the invention, which others can use in other ways -May be difficult to use for inventions coming from community knowledge rather than one individual
Protecting community knowledge from being used by others when still within the community	Trade secrets (common law and statute)	-Applies to all commercially valuable secrets -Can be held as secret within the community -Monetary damages for any breach can be claimed	-The intent must be to keep them secret -Generally need to show effort to maintain secrecy -Recourses can be expensive
Protecting community knowledge or works in the public domain from further use or imitation	Copyright No other existing intellectual property rights or remedies		-Only applies for life of artist plus 50 years
Protecting plant or animal resources associated with IK and provided to another person	Plant Breeders' Rights No other intellectual property rights apply	-Apply to protect new types of plants developed by breeders -Provides protection against others copying the plant	-Only applies to new plant products

Note: For a fuller description of intellectual property rights, see Annex 1.

ANNEX 4: INUIT RESEARCH GUIDELINES

Research principles for community-controlled research with the Inuit Tapirisat of Canada

1. Informed consent should be obtained from the community and from any individuals involved in research.

2. In seeking informed consent, the researcher should at least explain the purpose of the research; sponsors of research; the person in charge; potential benefits and possible problems associated with the research for people and the environment; research methodology; participation of, or contact with residents of the community.

3. Anonymity and confidentiality must be offered and, if accepted, guaranteed except where this is legally precluded.

4. Ongoing communication of research objectives, methods, findings and interpretation from inception to completion of project should occur.

5. If, during the research, the community decides the research is unacceptable, the research should be suspended.

6. Serious efforts must be made to include local and traditional knowledge in all stages of the research including problem identification

7. Research design should endeavour to anticipate and provide meaningful training of aboriginal researchers.

8. Research must avoid social disruption.

9. Research must respect the privacy, dignity, cultures, traditions and rights of aboriginal people.

10. Written information should be available in the appropriate language(s).

11. The peer review process must be communicated to the communities, and their advice and/or participation sought in the process.

12. Aboriginal people should have access to research data, not just receive summaries and research reports. The extent of data accessibility that participants/communities can expect should be clearly stated and agreed on as part of any approval process.